SUPPORTING BRIEF

The court will observe that the order of the District Court dated September 1, 1943 (R. 22) provides that:

> "The State Courts are authorized to exercise jurisdiction *for the purpose of determining the redemption rights of redemptioners,* but not as to the time as to when redemption may be made, which under the bankruptcy law, this Court reserves."

From the statement of the case and from the opinion of the Circuit Court of Appeals on the last appeal (Tr. 69) it will be observed that the case has long been before the courts and that the Circuit Court of Appeals on the former appeal held that the debtor had a right of redemption and that

> "This right of redemption is within the protective provisions of the Act."

Nevertheless, the Federal District Court stripped itself of all jurisdiction except the right to determine the time *when redemption might be made.* This is a jurisdictional matter and is but another attack upon the integrity of the law; for, if the Federal Court within the three-year period prescribed by Subsection (s) of Section 75 can limit the period of redemption, take from the debtor the possession of his farm and then refer the matter of determination of the right of redemption to the state court, the benefits of the law are for practical purposes nullified. Such an attack is more effective in destroying the law than the application of the good faith doctrine repudiated by this court in

> *John Hancock Mutual Life Ins. Co.* v. *Bartells,* 308 U. S. 180, 84 L. Ed. 176.

and in numerous cases following.

The question presented to this Court is therefore essentially a question of jurisdiction. If these decisions are sus-

tained section 75 (n) subjecting the farmer and all of his property

> "to the exclusive jurisdiction of the court,"

Subsection (s) providing that the court shall further order that the

> "* * * possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property."

shall remain in the debtor, and S-2 providing that:

> "During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semi-annually for that part of the property of which he retains possession."

and of S-3 which provides that:

> "At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal."

for practical purposes are rendered inoperative.

The orders of the Circuit Court are contrary to the decisions of this Court beginning with the *Bartells* case, *supra,* and continuing on down the line to

> *Wright* v. *Logan,* 315 U. S. 139, 86 L. Ed. 745, and
> *Wragg* v. *The Federal Land Bank of New Orleans,* 317 U. S. 325, 87 L. Ed. 300

in which this Court said:

> "It is for the bankruptcy court to determine, by reference to the provisions of the bankruptcy statute,

what rights created by state law—regardless of the characterization which may be applied to them by state statutes and decisions—are within the jurisdiction of the bankruptcy court." and

Mangus v. *Miller*, 317 U. S. 178, 87 L. Ed. 169, and *Meredith* v. *City of Winter Haven*, 320 U. S. 228, 88 L. Ed 1.

To make certain that there was no misunderstanding, the district court further ordered on October 16, 1943, (R. 24) that

"* * * The time of redemption, as provided under the provisions of Section 75 of the Bankruptcy Act, be extended until the final determination of the debtor's right of redemption is made by the state court of competent jurisdiction and until final decision of the Supreme Court of Utah and the Supreme Court of the United States and in case no appeal or appeals are taken, then until thirty days after the trial courts judgment has become final."

In other words, the debtor in a proceeding under Section 75 of the Bankruptcy Act is ordered out of the Federal District Court into the State District Court for the adjudication of his "right of redemption under the state law."

This not only runs counter to the very purpose of Section 75 as reflected in almost every paragraph of the statute, but also to a consistent line of decisions of this court construing the statutes and also to the long accepted general rule of law that a Federal Court may not decline to exercise its jurisdiction when properly invoked on the ground that the decision of the case on its merits may turn on questions of state law.

Meredith v. *City of Winter Haven, supra.*

And the judgment of the district court declining to exercise the jurisdiction expressly conferred upon it by the federal statutes has been approved on appeal.

The order itself expressly provides for extended litigation through the state courts, trial and appellate and also this Court by review of the judgment of the Supreme Court of Utah. All this necessarily means the long extension of this litigation which is criticized by the Circuit Court of Appeals as having already run too long.

How may the debtor terminate the litigation, if, after having thrice appealed for a definite ruling is thrown out of court with directions to start anew the litigation in the state courts? We think we have said enough to make clear to the court that the district court refused to exercise the exclusive jurisdiction conferred upon it by the statute; that it has been sustained in declining the jurisdiction; that the decisions of the District Court and the Circuit Court of Appeals are diametrically opposed to the numerous provisions of the statute and contrary to the fundamental theory of the law as construed by this Court. If the departure from the statute is not arrested, the statute wholly fails of its purpose.

Respectfully submitted,

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